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|-------------------------------|---|---------------------|
| IN THE MATTER OF              | : | BEFORE THE          |
| <b>MATTHEW &amp; KIMBERLY</b> | : | HOWARD COUNTY       |
| <b>MANCUSO</b>                | : | BOARD OF APPEALS    |
| Petitioners                   | : | HEARING EXAMINER    |
|                               | : | BA Case No. 08-036V |

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### **DECISION AND ORDER**

On September 8, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Matthew and Kimberly Mancuso for a variance to reduce the 75-foot structure setback from a front lot line to 14.8 feet for a detached accessory structure (a barn) in an RC-DEO (Rural Conservation-Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

William E. Erskine represented the Petitioners. The property owner Matthew Mancuso, Alfred Hansard, and Patrick Wallace testified in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 4<sup>th</sup> Election District on the west side of Underwood Road and is identified on Tax Map 9, Grid 8, as Parcel 348, Lot 4 and is also known as 1230 Underwood Road (the "Property").

2. The 3.0-acre Property is irregularly shaped. The front lot line runs some 90 feet along Underwood Road, then turns and runs 62 feet west, and turns again to run some 180 feet in a southerly direction to end at the southern lot line. The rear lot line is some 255 feet wide. The Property varies in depth, with the northern lot line being some 575 feet deep, and the southern, about 441 feet. The front lot line's unusual shape is the result of a previous resubdivision of Lots 1 & 2 of the Broch Na Dun Subdivision to create three lots, the County's approval of which was conditioned, apparently, on the creation of a reserve septic easement area along Underwood Road for Lot 3, a pipestem lot. Consequently, the current Lot 3 has about 232 feet of frontage along Underwood Road to accommodate the reserve septic area, next to which is the pipestem running along the subject property's south lot line.

3. The Property is improved by a 4,000-square foot, one-story single-family dwelling and a 570-square foot garage attached to the dwelling's north section, both of which are still under construction. The dwelling is sited in the Property's rear section, near the northern 30-foot side setback line. A large septic easement area is situated to the front of the dwelling. Access is provided via a long, 12-foot wide driveway that curves around the septic area and ends in large turnaround area in front of the dwelling and garage.

4. The driveway splits off where it curves around the septic reserve area to provide access to the subject of this variance, a one-story, 561-square foot barn (which was also under construction during my site visit) and a 60-foot long trailer turnaround area. At its closest, the

barn is 14.8 feet from the westernmost septic reserve property line and 110 feet from Underwood Road.

5. The entire Property slopes down considerably from the "high" ground in the northwest corner.

6. Vicinal properties. Adjacent properties are zoned RC-DEO. According to Petitioner's Exhibit 1, Lots 1 and 3 of the subdivision are unimproved. The rectangular shaped properties on the same side of Underwood as the subject property are wide and deep. Those across Underwood are much wider and shallower. Many are improved with single-family dwellings. The 2006 County aerial map indicates the area is partially in agricultural use.

7. The Petitioners, the property owners, are requesting a retroactive variance to reduce the 75-foot structure setback to 14.8 feet for the barn.

8. As Matthew Mancuso testified, the barn is located in only place practical, considering the site's physical conditions. The barn, which will have a cupola, is necessary because a portion of the site to the east and south of the septic area will be orchards or vineyards. The 60-foot turnaround area is necessary for backing a trailer out of the barn, and according to Mr. Mancuso, is 40 feet less than what his engineers recommended. A row of existing trees at the property line hides the barn.

9. He also stated that County required him to locate a swale around and behind the house and a stormwater management facility where the barn was to originally to be located, in the southwest section. The swale is intended to provide stormwater management for the area, which drains to a creek to the Property's southwest. The stormwater facility is a bio-pond, which treats the water, then releases it to the creek. There is also a natural drainage area in the Property's

front, which runs from the northeast to the south, including a culvert. The barn's location and driveway is also intended to respect the site's natural drainage in this area. Additionally, the location of the septic area necessitated the driveway's length.

10. The house is a "green" house with geothermal heat. A long geothermal heat exchange (10,000 feet of piping buried 5 feet below ground) runs east of the stormwater facility and south of the house. The potential need to make repairs to this system precludes construction over it, according to Mr. Mancuso.

11. Alfred Hansard, the property owner's engineer, testified the topography dictated the location of the house, which could not be located elsewhere because the County asked the owner to create the artificial swale behind and around the house and the Petitioners want to preserve the natural swale in the front section.

12. Patrick Wallace, the owner of Lot 3, testified to supporting the requesting variance, stating it would have no impact on his septic reserve area.

13. Underwood Road is a County scenic road.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not

substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I conclude the requested variance complies with Section 130.B.2.a and may therefore be granted.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined "uniqueness" thus.

In the zoning context, the 'unique' aspect of a variance requirement *does not refer to the extent of improvements upon the property, or upon neighboring property.*

'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.

*North v. St. Mary's County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Property's topography, irregular shape, and drainage pattern constitute unique physical conditions resulting in practical difficulties in complying strictly with the setback requirements of the Zoning Regulations for properties within the RC-DEO zoning district, in accordance with Section 130.B.2.a(1).

The granting of the variance will enable the Petitioner to maintain the barn at its present location. The nature and intensity of uses on the Property, a combination of residential and agricultural uses, is typically found in the RC district and in the immediate neighborhood. Barns are typically located along scenic roads and the barn in this case one will be less visible owing to existing vegetation. But for the septic reserve area required for Lot 3, the barn would be 110 feet from the scenic road. In my view, neither the barn's location nor its design will detract from the scenic quality of Underwood. Nor will its location impair the use of Lot 3's septic reserve area should this become necessary. I therefore conclude the variance, if granted, will not alter the character of the neighborhood in which the Property is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare as required by Section 130.B.2.a(2).

The practical difficulty in complying strictly with the 75-foot structure and use setback arises from the irregular shape of the lot and physical conditions and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

The barn's location within the setback is driven by environmental and physical conditions and the area needed for the turnaround, which at 60 feet is 40 feet less than recommended by the Petitioners' engineers. I therefore conclude the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this 15<sup>th</sup> day of September 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Matthew and Kimberly Mancuso for a variance to reduce the required 75-foot structure and use setback to 14.8 feet for an existing barn in an RC-DEO zoning district is **GRANTED**.

**Provided, however, that:**

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:**

9/17/08

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.